

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT TORRES	:	CIVIL ACTION
	:	
v.	:	
	:	
KILOLO KIJAKAI,	:	
Acting Commissioner of	:	
Social Security	:	NO. 22-2283

SUPPLEMENTAL OPINION

SCOTT W. REID
UNITED STATES MAGISTRATE JUDGE

DATE: November 21, 2022

The undersigned filed an Order and an Opinion today in the above-captioned action brought by Robert Torres under 42 U.S.C. §405(g) to obtain review of the decision of the Commissioner of Social Security denying his claim for Supplemental Security Income (“SSI”). Also today, and shortly after the Order and Opinion were submitted for filing, Torres filed an untimely Reply Memorandum.

Despite the fact that the Reply Memorandum was filed several days later than permitted without permission of Court, I address it in this Supplemental Opinion. Torres specifies in his Reply that he claims disability under former listing 1.04C, which directed a finding of disability on the basis of a musculoskeletal disorder where an applicant was unable to ambulate effectively. 20 C.F.R. Part 404, Subpt. P, App. 1 at §1.04C.

The Listings, however, generally defined “inability to ambulate effectively” as having “insufficient lower extremity function to permit independent ambulation **without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.**” 20 C.F.R. Part 404, Subpt. P, App. 1 at instruction 2(b)(1).

Torres maintains that Ziba Monfared, M.D., the independent consulting medical expert who examined him on May 10, 2016, found that he was “unable to walk.” Reply at 5. In fact, however, she wrote that he used a single cane, and that his “gait was normal with the cane.” Record at 461. Without the cane, “he was slightly slow with ambulation and cautious” but with “no limping.” *Id.* This examination took place shortly after Torres’s 2016 back surgery. When Torres was examined by a second independent consulting physician, Abaid Choudry, M.D., on September 12, 2018, Dr. Choudry noted that Torres “used no assistive devices,” and wrote: “Gait normal. Can walk on heels and toes without difficulty.” Record at 948.

The record does not, therefore, support Torres’s argument that he would have met the former Listing 1.04C. Accordingly, the undersigned will not revise the Order he entered on this day based on Torres’s Reply Memorandum.

BY THE COURT:

/s/ Scott W. Reid

SCOTT W. REID
UNITED STATES MAGISTRATE JUDGE